

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.
SUITE 1200
WASHINGTON, DC 20036
(202) 857-3500

**WRITER'S DIRECT DIAL
(202) 828-9475**

September 30, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

**Re: CC Docket No. 96-45
Virginia Cellular, LLC
Petition for Designation as an ETC in the Commonwealth of Virginia**

Dear Madam Secretary:

On behalf of Virginia Cellular, LLC ("Virginia Cellular"), we have enclosed data requested by the Commission concerning the population density within certain areas served by nonrural carriers. While Virginia Cellular is pleased to provide this information to assist the Commission, it appears that an analysis of competitive entry into areas served by non-rural carriers is inappropriate under Section 214 of the Act and Part 54 of the Commission's rules.

The Communications Act makes clear that the Commission shall designate competitive ETCs in areas served by nonrural carriers if they can provide the supported services.¹ The Commission has, on several occasions, reiterated that designation of a competitive ETC ("CETC") in nonrural areas *per se* serves the public interest.² In our experience, neither the FCC nor any state has ruled by final order that a public interest analysis is properly performed in areas served by nonrural telephone companies. Moreover, the Act provides for service area redefinition for rural ILEC service areas only.³

¹ 47 U.S.C. § 214(e)(6).

² See, e.g., *Pine Belt Cellular, Inc., Memorandum Opinion and Order*, 17 FCC 9589, 9594 (Wir. Comp. Bur. 2002) citing *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order*, 15 FCC Rcd 39 (Com. Car. Bur. 2000). Although these orders were made under delegated authority, their respective review periods have expired and therefore the orders "have the same force and effect as actions taken by the Commission." 47 C.F.R. § 0.5(c).

³ 47 C.F.R. § 214(e)(5).

In some cases, including this one, the Commission has requested population density data for wire centers of rural telephone companies to examine whether uneconomic support would accrue to a CETC. Presumably, that analysis is related to the Joint Board's recommendation regarding whether a CETC is engaging in "cream skimming" of a rural ILEC service area. However, the Commission has never before looked to these statistics in a nonrural setting. That is because Congress deliberately allowed the Commission, when acting pursuant to Section 214(e)(6), to establish a CETC service area in portions of nonrural ILEC study areas without the need for redefinition.⁴ As a result, the Joint Board's "cream skimming" analysis applies only to areas served by rural ILECs.⁵

From a practical perspective, it does not appear possible for Virginia Cellular to "cream skim" the nonrural ILEC service areas in question. Virginia Cellular will receive *zero* high-cost support in the portions of the Verizon South d/b/a Contel and Verizon Virginia, Inc. service areas it covers. Virginia Cellular will only receive small amounts of Interstate Access Support, which is already disaggregated among ILEC cost zones.⁶ This provides further assurance that Virginia Cellular will not receive uneconomic levels of support in those areas.⁷

Virginia Cellular has taken note of Verizon's various requests that the Commission limit IAS portability. Those issues are outside the scope of ETC designation proceedings and should be dealt with in an appropriate forum where all interested parties may properly participate.⁸

⁴ 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company"). *See also* 47 C.F.R. § 54.207(b).

⁵ *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8880-83 (1997). Other than instances in which a carrier is deliberately targeting low-cost areas to receive uneconomically high levels of support, we believe an analysis of the potential for "cream skimming" is not properly included in the Section 214(e)(5) public interest analysis – even assuming the public interest analysis were applicable to areas served by nonrural ILECs.

⁶ *See* Supplement to Petition for Designation as an Eligible Telecommunications Carrier (filed Sept. 5, 2003) at p. 5 n.10.

⁷ For example, as the attached chart shows, Verizon South's Elkins wire center has the highest population density of all partially covered nonrural ILEC wire centers in Virginia Cellular's proposed ETC service area. However, that wire center also receives the lowest amount of IAS of any partially covered Verizon South wire center.

⁸ *See, e.g., Cellular South License, Inc.*, DA 02-3317, *Memorandum Opinion and Order* (WCB, Dec. 4, 2002) at ¶ 32.

Marlene H. Dortch
September 30, 2003
Page 3

We trust that you will find this information to be useful. Should you have any questions or required any additional information, please call.

Sincerely,

/s/ David LaFuria

David LaFuria
Steven Chernoff
Counsel for Virginia Cellular, LLC

Enclosure

cc: Christopher Libertelli, Esq.
Jessica Rosenworcel, Esq.
Daniel Gonzalez, Esq.
Matthew Brill, Esq.
Barry Ohlson, Esq.
Eric Einhorn, Esq.
William Scher, Esq.
Paul Garnett, Esq.
Thomas Buckley, Esq.